United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-7027 74-1279

ORIGINAL

United States Court of Appeals

For the Second Circuit.

B
P/S

ROBERT W. McCUNE,
Plaintiff-Appellee,

against

LOUIS J. FRANK, Commissioner of Police of the County of Nassau, and the POLICE DEPARTMENT OF THE COUNTY OF NASSAU,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

BRIEF OF PLAINTIFF-APPELLEE.

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Background of the Case.

This appeal, taken by defendants-appellants, is from a decision by the Hon. Jacob Mishler, Chief Judge of the United States District Court for the Eastern District of New York, said decision dated December 13, 1974, which declares as unconstitutional, void and of no effect Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department as well as permanently enjoining the defendants-appellants from enforcing same.

Initially, plaintiff-appellee instituted an action by way of an order to show cause signed by United States District Court Judge, Leo F. Rayfiel, on September 5, 1974, with a supporting affidavit which sought to have declared as

unconstitutional, and thus render null and void, Article VIII, Rule 22, as amended, of the Rules and Regulations of the Nassau County Police Department. In conjunction with said order to show cause, the defendants-appellants were temporarily enjoined, pending a hearing and determination, from enforcing Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department and the defendants-appellants were additionally temporarily enjoined, pending a hearing and determination, from prosecuting the plaintiff-appellee for violating Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department.

In addition to said order to show cause, plaintiff-appellee, on or about September 5, 1974, filed a complaint against defendants-appellants in an action for a declaratory judgment seeking a determination that Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department was in fact unconstitutional.

Although, in said complaint, plaintiff-appellee additionally challenged the constitutionality of Sections 75 and 76 of the Civil Service Law of the State of New York, with respect to the appointment of a Trial Commissioner from the ranks of the Police Department, alleging that said procedure violated plaintiff-appellee's due process guarantees under the Fifth and Fourteenth Amendments of the United States Constitution since said Trial Commissioner is an individual directly beholden to the defendant-appellant Louis J. Frank, Commissioner of Police of the County of Nassau and thus an impartial trial could not occur, said challenge to the constitutionality of Sections 75 and 76 of the Civil Service Law, of the State of New York, is not part of the appeal which is currently before this court, as the parties below set aside said challenge as an issue not to be litigated in said proceedings,

leaving one remaining issue for the court to decide, namely, the constitutionality of Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department.

The factual background that led up to the institution of the proceedings in the District Court arises from the fact that on or about July 5, 1974, plaintiff-appellee was served with a copy of Charges and Specifications which alleged that on May 14, 1974, plaintiff-appellee did violate Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department in that, on said date, plaintiff-apellee did wear his sideburns extending below the mid part of his ears, to wit, the lower edge of his earlobe and then flared out to a width of about at least one (1) and one-quarter (¼) inches.

In response to the filing of said Charges and Specifications, the plaintiff-appellee, on July 16, 1974, entered a not guilty plea before defendants-appellants and a trial date was set for September 17, 1974. Prior to said September 17, 1974, trial date, plaintiff-appellee, on September 5, 1974, sought an order to show cause and a temporary restraining order seeking to enjoin, until a hearing and determination, the defendants-appellants from prosecuting plaintiff-appellee under said Charges and Specifications.

In response to said order to show cause, defendants-appellants, on or about the 6th day of September, 1974, filed an affidavit in opposition with regard thereto. Additionally, defendants-appellants requested that the stay granted with the order to show cause be vacated, and that the complaint of the plaintiff-appellee be dismissed.

The relief sought in said affidavit in opposition by the defendants-appellants was not in fact granted, and on September 16, 1974, the issues raised by plaintiff-appellee in the case at bar came on before the Hon. Justice Jacob Mishler, Chief Judge of the United States District Court for the Eastern District of New York, with the taking of testimony. On October 25, 1974, the hearing before the Hon. Justice Jacob Mishler as to the issues raised by plaintiff-appellee was in fact concluded with the judge reserving decision.

On December 13, 1974, the Hon. Justice Jacob Mishler rendered a memorandum decision wherein he held the plaintiff-appellee was not barred by the doctrine of *res judicata* from proceeding in the Federal Court in challenging the constitutionality of Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department, and further held that defendants-appellants failed to establish a legitimate state interest for the grooming standards as set forth in Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department and, therefore, granted judgment in favor of the plaintiff-appellee against the defendants-appellants, declaring that Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department was unconstitutional, void and of no effect and permanently enjoined the defendants-appellants from enforcing same. On December 18, 1974, a judgment was entered declaring Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department to be unconstitutional, null and void and permanently enjoining the defendants-appellants from enforcing same.

On or about December 18, 1974, defendants-appellants served a notice of appeal from the judgment referred to above.

Rule in Question.

It is Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department which is in issue herein, said rule being as follows:

> "Members of the Force and Department shall be neat and clean at all times while on duty. Male personnel shall comply with the following grooming standards unless excluded by their Commanding Officer due to special assignment:
>
> "Haircuts—Hair shall be neatly cut and trimmed at all times while on duty. Hair styles shall be conservative and not excessive in length.
>
> "Sideburns—Sideburns shall not extend below the mid part of the ear and shall be trimmed level.
>
> "Moustaches—A short and neatly trimmed moustache may be worn, but shall not extend over the top of the upper lip or beyond the corners of the mouth.
>
> "Beards, Goatees—Male personnel shall be clean shaven when reporting for duty. Beards or goatees shall not be worn while on duty. A growth of whiskers shall be permitted while on duty for medical reasons only when approved by the Chief Surgeon."

In accordance with the above, teletype order #114, on or about April 3, 1971, was issued which amended the Rules and Regulations of the Police Department, County of Nassau, so as to provide with regard to Article VIII, Rule 22, of the Nassau County Police Department that:

> "Personal Appearance—The Provisions of Article VIII, Rule 22 of the Rules and Regulations pertaining to sideburns shall be adhered to and in no case shall sideburns extend to a point below ¾ of an inch above the bottom of the ear lobe. All provisions relating to moustaches, beards and haircuts shall be strictly conformed with."

Questions Raised on Appeal by Defendants-Appellants.

POINT I. Do the requirements of "full faith and credit" tate the reversal of the lower court's determination?

POINT II. Is plaintiff-appellee barred from instituting said District Court proceeding because of the doctrine of *res judicata?*

POINT III. Does *England v. Louisiana Medical Examiners,* 375 U. S. 411, 11 L. Ed. 2d 440, 84 S. Ct. (1964), stand as a bar to plaintiff-appellee's suit?

POINT IV. The Second Circuit Court of Appeals was correct in its holding in *Dwen v. Barry,* 483 F. 2d 1126 (2d Cir. 1973), when it held that substantial constitutional issues are raised when regulations as to an individuals hair length are prescribed by a municipal employer.

POINT V. Defendants-appellants have not met the burden of proof required to justify the existence of Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department.

POINT VI. Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department is in fact unconstitutionally vague.

POINT I.

Do the requirements of "full faith and credit" dictate the reversal of the lower court's decision?

Plaintiff-appellee does not dispute the fact that the concept of "full faith and credit" is a judicial tenet basic

to United States jurisprudence. As defined in 28 U.S.C.A. Section 1738 with regard to the concept of "full faith and credit," said statute states in part:

> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

Issue, however, is taken with defendants-appellants with regard to the applicability of the concept of "full faith and credit" to the issues presented herein, since inherent in the concept of "full faith and credit" is the conclusion that *res judicata* is applicable under the particular circumstances.

As will be more fully set forth in the following plaintiff-appellee's Point II, it is the plaintiff-appellee's contention that the District Court was correct in determining that plaintiff-appellee's suit was not barred by the applicability of *res judicata* since the applicability of said concept required a finding that there existed between the District Court proceedings and a previously determined suit not only an identity of parties with regard to each of said matters, but also an identity of issues.

As determined by the District Court, and as herein respectfully submitted, although the District Court determined that there did in fact exist an identity of parties between the plaintiff-appellee herein and the petitioner in the *Matter of Greenwald v. Frank,* 70 Misc. 2d 632 (Nassau County, Sup. Ct., 1972), affirmed 40 A. D. 2d 717 (2nd Dept. 1972), affirmed with the opinion 32 N. Y. 2d 862 (1973), the District Court concluded and it is

respectfully submitted, correctly, that there did not exist an identity of issues between the instant case and those issues raised in *Matter of Greenwald v. Frank, supra.*

Although plaintiff-appellee does take the position that there did not in fact exist an identity of parties between the plaintiffs-appellee in the above captioned matter and the petitioner in *Matter of Greenwald v. Frank, supra,* and thus the nonapplicability of the concept of *res judicata* with regard to the above captioned matter, plaintiff-appellee does not seek to challenge the District Court's holding in this matter since plaintiff-appellee believes that the proper decision was in fact reached by the District Court, since it held that *res judicata* was not a bar to plaintiff-appellee's lawsuit since there did not exist an identity of issues between said lawsuit and the *Matter of Greenwald v. Frank, supra,* as contended by the defendants-appellants.

As will be more fully set forth in the following brief, it is respectfully submitted to this court that, in the *Matter of Greenwald v. Frank, supra,* there was never raised, nor was there decided, by either the State Supreme Court, the Appellate Division of said State Supreme Court, or the New York State Court of Appeals, the constitutional issues raised and determined by the District Court with regard to the above captioned matter.

In light of the above, it is respectfully submitted to this court that since the applicability of the doctrine of "full faith and credit" is founded upon a conclusion that *res judicata* is applicable, and since it is respectfully submitted to this court that under the facts and circumstances of the proceedings heretofore had herein, and in conjunction with the applicable related matters, that *res judicata* does not act as a bar to the institution by plaintiff-appellee of

said lower court proceedings, defendants-appellants' "full faith and credit" argument is rendered meaningless.

For the reasons stated above, it is respectfully submitted to this court that defendants-appellants' argument for overturning the District Court's determination based upon the requirements of "full faith and credit" should in fact be denied.

POINT II.

Is plaintiff-appellee barred from instituting said District Court proceeding because of the doctrine of *res judicata*?

Plaintiff-appellee respectfully submits to this court that the doctrine of *res judicata* does not act as a bar to the commencement by plaintiff-appellee in the District Court of the above captioned matter and the District Court was correct in so holding.

Although, as stated above, plaintiff-appellee takes issue with the District Court's determination that there existed an identity of parties between the plaintiff-appellee herein and the petitioner in the *Matter of Greenwald v. Frank, supra,* plaintiff-appellee does concur with the District Court's decision in holding that there did not exist an identity of issues between *Matter of Greenwald v. Frank, supra,* and the above captioned matter so as not to have applicable to the above captioned proceedings the concept of *res judicata.*

It is respectfully submitted to this court that in the *Matter of Greenwald v. Frank, supra,* at the Supreme Court level, there was no determination as to the con-

stitutionality of Article VIII, Rule 22, as amended, of the Rules and Regulations of the Nassau County Police Department. On the contrary, Justice McCaffrey discussed, in part, the validity of Rule 22; however, the decision did not rest upon a finding of constitutionality, but, rather, Justice McCaffrey dismissed Greenwald's petition fully on the grounds that:

> "The petitioner has not demonstrated that a triable issue exists concerning the relationship of his determining his own personal appearance while in uniform to that of public interest." *Matter of Greenwald v. Frank, supra,* 70 Misc. 2d at 639.

The Appellate Division of the State Supreme Court affirmed the Supreme Court decision of Justice McCaffrey after modifying it to the extent of declaring Rule 22 to be valid (*Matter of Greenwald v. Frank,* 40 A. D. 2d 717 [2nd Dept. 1972]) and specifically held:

> "[T]his regulation [Article VIII, Rule 22] does not raise issues which rise to the dignity of constitutional questions." *Matter of Greenwald v. Frank, supra,* 40 A. D. 2d at 717.

It is defendants-appellants' argument that when the Appellate Division modified Justice McCaffrey's decision by holding Rule 22 to be valid, that by so doing, the appellate court determined the constitutionality of Rule 22. Further, defendants-appellants seek to substantiate said position by referring to the dissenting opinion of the Hon. Justice Shapiro which expressed the opinion that Rule 22 was unconstitutional.

If taken out of context as stated above, defendants-appellants' argument might possibly have some merit, however, such a position completely overlooks the ex-

pressed wording of the majorities opinion by the appellate court when it stated in *Matter of Greenwald v. Frank, supra,* in 40 A. D. 2d at 717:

> "In our opinion this regulation [Article VIII, Rule 22] does not raise issues which rise to the dignity of constitutional questions."

and further overlooks the fact that the state court decisions with regard to *Matter of Greenwald v. Frank, supra,* were handed down before this court decided *Dwen v. Barry,* 483 F. 2d 1126 (2nd Cir. 1973), said *Dwen v. Barry, supra,* decision being dated August 22, 1973, and *Matter of Greenwald v. Frank, supra,* being affirmed by the New York State Court of Appeals as of May 30, 1973.

The significance of the holding in *Dwen v. Barry, supra,* with regard to the issue of *res judicata* is that in *Dwen v. Barry, supra,* there is recognized for the first time, in this circuit, a judicial recognition that substantial constitutional issues are raised by regulations that attempt to regulate a police officer's hair length. *Dwen v. Barry, supra,* at 1130. Additionally, this court in *Dwen v. Barry, supra,* placed the burden of proof in hair length cases, such as that which is currently before this court, upon the municipal employer when this court held in *Dwen v. Barry, supra,* at 1130, that:

> "Personal liberty is not composed simply and only of freedoms held to be fundamental but includes the freedom to make and act on less significant personal decisions without arbitrary government interference. Limitation of such a right requires some showing of public need.
>
> "We hold only that choice of personal appearance is an ingredient of an individual's personal liberty, and that any restriction on that right must be

> justified by a legitimate state interest reasonably related to the regulation."

Furthermore, this court held in *Dwen v. Barry, supra,* at 1131 that the state had:

> "* * * the burden of establishing a genuine public need for the regulation."

As can be seen from the above, *Dwen v. Barry, supra,* interjected into hair length cases, such as the one currently before this court, issues that prior to *Dwen v. Barry, supra,* were not considered as being of any significance either by the Federal Courts of this Circuit or by the state courts of this state, namely:

> "* * * [a] that choice of personal appearance is an ingredient of any individual's personal liberty, and [b] that any restriction on that right must be justified by a legitimate state interest reasonably related to the regulation." *Dwen v. Barry, supra,* at 1130.

Obviously, it is respectfully submitted to this court that since the above rights and obligations were not recognized as of the time of the state proceedings with regard to *Matter of Greenwald v. Frank, supra,* that it cannot be concluded that issues raised with regard to the holding in *Dwen v. Barry, supra,* as referred to above, were in fact litigated in the state courts.

Similarly, as will be more fully set forth in plaintiff-appellee's Point III, the doctrine set forth in *England v. Louisiana Medical Examiners,* 375 U. S. 411, 84 S. Ct. 461 (1964), is not controlling since, as of the time of the State Court proceedings and determinations, *Dwen v. Barry, supra,* had not been decided and thus there was

no clear statement of any constitutional issues which plaintiff-appellee herein should have reserved to litigate in the Federal Courts. Obviously, it was not the intent of the holding in *England v. Louisiana Medical Examiners, supra,* nor the doctrine of *res judicata* to situations so as to bar the adjudication of an issue in Federal Court which could not have been decided in the state courts.

For the reasons stated above, it is respectfully submitted that plaintiff-appellee was not barred by the doctrine of *res judicata* from instituting the proceedings in the District Court and that the District Court was correct in so holding.

POINT III.

Does *England v. Louisiana Medical Examiners*, 375 U. S. 411, 11 L. Ed. 2d 440, 84 S. Ct. (1964), stand as a bar to plaintiff-appellee's suit?

Plaintiff-appellee respectfully submits to this court that the holding in *England v. Louisiana Medical Examiners,* 375 U. S. 411, 11 L. Ed. 2d 440, 84 S. Ct. (1964), does not stand as a bar to plaintiff-appellee's suit since the issues raised and litigated in the District Court proceedings with regard to the above captioned matter were not litigated in any state court proceedings nor could they have been at the time of said state court proceedings.

With regard thereto, the court's attention is respectfully drawn to plaintiff-appellee's points I and II above, and, more particularly, to the fact that the Appellate Division of the State Supreme Court in *Matter of Greenwald v. Frank, supra,* declared that Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police

Department did not raise issues that rose to the dignity of constitutional questions, said decision being affirmed on appeal by the New York State Court of Appeals on May 30, 1973, and it was not until this court's holding in *Owen v. Barry, supra,* on August 22, 1973, after the conclusion of all state litigation with regard to *Matter of Greenwald v. Frank, supra,* that it was recognized in the Second Circuit that hair length regulations raised constitutional issues as well as placing upon the municipal employer the obligation of justifying said regulations.

Obviously, it was impossible for plaintiff-appellee to have reserved his rights in the state court litigation so as to preserve the right to litigate same in the Federal Courts when in fact said rights, as of the time of said state court proceedings, had not in fact been judicially recognized.

In light of the above, it is respectfully submitted that the lower court properly determined that *England v. Louisiana Medical Examiners, supra,* under the facts and circumstances of the present case, was not controlling since as of the time of said state court adjudications, there was not a clear statement of a constitutional issue which the plaintiff-appellee should have reserved so as to later litigate in the Federal Courts.

In support of the above, this court is directed to two cases cited by the Hon. Jacob Mishler, whose decision herein is being appealed, said cases being cited in a memorandum decision dated January 29, 1975, wherein Judge Mishler denied defendants-appellants' motion seeking a stay with regard to his decision in the above captioned matter until this court rendered its decision with regard to the appeal currently before it.

The first of said cases referred to above is a case decided by this court entitled *Lombard v. Board of Education of City of New York*, 502 F. 2d 631 (2nd Cir. 1974), wherein this court related that there may be instances where an action which had gone through the entire trial and appellate process and the state courts would not constitute a *res judicata* bar as to an action instituted in the Federal Courts since, theory, *res judicata* cannot be applied where there is an issue which could not have been decided in the state court proceedings. See also, *Newman v. Board of Education of City School District of New York*, No. 74-1845, Slip Opinion (2nd Cir. Jan. 6, 1975).

It is for the reasons stated above that plaintiff-appellee respectfully submits to this court that the doctrine of *England v. Louisiana Medical Examiners, supra*, does not stand as a bar to plaintiff-appellee's suit.

POINT IV.

The Second Circuit Court of Appeals was correct in its holding in *Dwen v. Barry*, 483 F. 2d 1126 (2d Cir. 1973), when it held that substantial constitutional issues are raised when regulations as to an individual's hair length are prescribed by a municipal employer.

It is respectfully submitted to this court that its decision in *Dwen v. Barry, supra*, was in fact proper and should not be overturned.

More particularly, it is not the intention of plaintiff-appellee herein to recite nor justify this court's action to itself with regard to *Dwen v. Barry, supra*, but rather plaintiff-appellee wishes to point out to this court that the defendants-appellants have in no way justified having this

court overturn its decision in *Dwen v. Barry, supra.* On the contrary, defendants-appellants merely attempt to present some of the old rationales that this court discounted in its opinion with regard to *Dwen v. Barry, supra,* and, absent the presentment to this court of new precedent for overturning its recent decision, plaintiff-appellee respectfully submits that said decision should in fact stand.

For the reasons stated above, it is respectfully submitted to this court that the decision in *Dwen v. Barry, supra,* should not be overturned and that its obvious applicability to the facts and circumstances of the case presented before this court be in fact applied hereto with the resulting conclusion that the District Court was correct in determining that Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department was in fact unconstitutional.

POINT V.

Defendants-appellants have not met the burden of proof required to justify the existence of Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department.

It is respectfully submitted to this court that the defendants-appellants have failed to meet the burden of proof placed upon them by *Dwen v. Barry, supra,* in their attempt to justify the existence of Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department.

As set forth in *Dwen v. Barry, supra,* at 1130, this court held that the choice of one's personal appearance is an ingredient of an individual's personal liberty and

that any restriction on said liberty must be justified by a legitimate state interest reasonably related to said restrictive regulation and, absent a showing of a proper justification, said regulation must fall.

Defendants-appellants have attempted to justify the existence of Article 8, Rule 22, of the Rules and Regulations of the Nassau County Police Department by attempting to establish through the taking of testimony before the District Court that there were risks in having bearded police officers utilize gas masks, that there were risks in having long-haired police officers capture a criminal and that, in the opinion of defendants-appellants, the public would question the authority of long hair and/or police officers, thus impairing the effectiveness of the police mission.

The court, after hearing evidence with regard to the above propositions, which were cited by defendants-appellants as a basis for the showing of a proper justification for the regulation in question, determined, and it is respectfully submitted by plaintiff-appellee, properly so, that the proposed justifications by defendants-appellants did not warrant the existence of said restrictive regulation as said testimony failed to establish the existence of a legitimate state interest sufficient to warrant the existence of Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department. For defendants-appellants to merely state that the grooming standards are required so as to enable the utilization of gas masks does not result in the conclusion that a legitimate state interest related to safety, has in fact been met so as to provide justification for a particular regulation which is far-reaching in its scope and applicability. As with all constitutional guarantees, there is a weighing of interests with regard to any encroachment thereof, and it is re-

spectfully submitted to this court that the mere possibility or infrequent likelihood of an individual's grooming preferences causing the deterioration of a gas mask seal does not warrant the impairment of some 3,500 to 4,000 men's constitutional rights to determine their own grooming characteristics.

For the reasons stated above, plaintiff-appellee respectfully submits to this court that the lower court was correct in determining that defendants-appellants failed to establish a legitimate state interest with regard to the grooming standards set forth in Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department so as to justify its continued existence.

POINT VI.

Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department is in fact unconstitutionally vague.

To better understand the plaintiff-appellee's contention with regard to the above, reference is herein made to Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department which reads as follows:

> "Members of the Force and Department shall be neat and clean at all times while on duty. Male personnel shall comply with the following grooming standards unless excluded by their Commanding Officer due to special assignment:
>
> "Haircuts—Hair shall be neatly cut and trimmed at all times while on duty. Hair styles shall be conservative and not excessive in length.

"Sideburns—Sideburns shall not extend below the mid part of the ear and shall be trimmed level.

"Moustaches—A short and neatly trimmed moustache may be worn, but shall not extend over the top of the upper lip or beyond the corners of the mouth.

"Beards, Goatees—Male personnel shall be clean shaven when reporting for duty. Beards or goatees shall not be worn while on duty. A growth of whiskers shall be permitted while on duty for medical reasons only when approved by the Chief Surgeon."

In accordance with the above, teletype order #114 on or about April 3, 1971, was issued which amended the Rules and Regulations of the Police Department, County of Nassau, so as to provide with regard to Article VIII, Rule 22, of the Nassau County Police Department that:

"Personal Appearance—The provisions of Article VIII, Rule 22 of the Rules and Regulations pertaining to sideburns shall be adhered to and in no case shall sideburns extend to a point below ¾ of ~~an inch~~ above the bottom of the ear lobe. All provisions relating to moustaches, beards and haircuts shall be strictly conformed with."

With the above text in mind, it is respectfully submitted to this court that Article VIII, Rule 22, of the Rules and Regulations of the Nassau County Police Department is in fact unconstitutionally vague since the following phraseology that is included therein is not subject to definitive interpretation, said phraseology being:

"Hair shall be *neatly* cut * * *"

"Hair styles shall be *conservative* and not *excessive in length.*"

"Sideburns shall not extend below the *mid part of the ear* * * *"

"A *short* and *neatly trimmed* moustache may be worn * * *."

(Italics added to designate vagueness.)

Conclusion.

For the reasons stated above, plaintiff-appellee respectfully submits to this court that the opinion by the Hon. Justice Jacob Mishler, Chief Judge of the Federal District Court of the Eastern District of the State of New York, should be herein affirmed.

Dated: Mineola, New York,
April 1, 1975.

Respectfully submitted,

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